

CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 193

January 7, 1957

GAMBLING LOSSES: DEDUCTIBILITY OF "SHILL" LOSSES

Syllabus:

Gambling losses of shills employed by poker club to induce business are deductible only to the extent of gains. They are not deductible in full as business expenses.

Subject taxpayers are partners in a draw poker establishment. The partnership receives its income from the rentals charged patrons who engage in these games.

In an effort to induce the play, in certain slow periods, the club employs "shills" who play with funds furnished them by the club. The club absorbs the losses or takes the gains resulting from the efforts of these "shills". Strict rules are applicable to the "shills" who must wear badges indicating to the other players that they are employed by the house. The "shills" are only allowed to "open" in a particular hand if they have an exceptionally high hand, and are never allowed to raise. Because of these restrictions the "shills" seldom win money for the house. The "shills" are paid a regular salary for their services.

Section 17206(d) provides that "Losses from wagering transactions shall be allowed only to the extent of gains from such transactions." This is a specific provision on the subject of gambling losses and thus it is a limitation upon the general application of Section 17206(c)(1), the section providing for the deductibility of business expenses. Section 17206(d) is the exclusive statutory authority dealing with the deductibility of gambling losses regardless of whether the individual incurring the losses is a professional or a casual gambler. Humphrey v Comm., 162 Fed. 2d 853, Skeels v U.S., 95 Fed. Supp. 242.

The fact that the "shills" are employed merely to induce the play rather than in the expectation that they will win money for the house does not prevent the application of Section 17206(d). The house imposes these playing conditions on the "shills" to serve its own interest. Despite these self-imposed conditions, the "shills" are still engaged in gambling when they enter a game. The fact that they play under slightly different conditions than the other players does not change the basic nature of their activities. The losses are deductible only to the extent of the gains. They are not deductible in full as business expenses.